IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 19768 of 2004

Between:

M/s. Sinclaire Infra Tech Ltd., 2nd Floor, APEC Complex,
Kushaiguda, Hyderabad rep by Director,
S. Satish Kumar S/o S.S. Raghavan r/o D.D. Colony, Hyderabad

..... PETITIONER

AND

1 Union of India rep by Secretaryto the Government Department of

Telecommunications, Ministro of Telemommunications, New-Delhi
2 Bharath Sanchar Nigam Limited (BSNL) B-148, Dtateman Road, barakambha

road, New Delhi, Chairman & Managing Director at New Delhi
3 Bharath Sanchar Nigam Limited (BSNL) B-148, Statesman road, Barakambha

road, New Delhi, rep by Deputy Director General (MM)
4 Bharath Sanchar Nigam Limited (BSNL) B-148, Statesman road, Barakambha

road, New Delhi, rep by Jt. Deputy Director General (MMT)
5 Bharath Sanchar Nigam Limited (BSNL) B-148, Statesman road, Barakambha

road, New Delhi, rep by Asst. Director General (ADG, MMX) at New Delhi

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus by declaring the condition imposed in clause 2 (II) in bid document called by the 4th respondent for supply of STM-1 equipment vide tender No. MM/OF102004/000278 Issued on 11-10-2004 in violation of the procurement

policy guideline and hence is illegal, contrary to Art. 14 19(1)(g) of Constitution of India and consequently direct the respondents not to make 25% pre supply condition as part of eligibility criteria in the interest of justice and equity

Counsel for the Petitioner: MR.A.RAVINDER

Counsel for the Respondent No.1: MR.ARAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondents No.2 to 5: Mr. R.S. Murty

The Court made the following:

ORDER:

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This writ petition is filed questioning Clause 2 (II) in the Tender notified issued by the 4th respondent, for supply of STM-1 equipment Vide tender No.MM/OF/102004/000278 issued on 11.10.2004.

2. In the counter affidavit filed by the 4th respondent on behalf of the respondents territorial jurisdiction of this Court to entertain this writ petition is questioned.

3. Since respondents took a preliminary objection relating to the jurisdiction of this Court to entertain this petition, issue relating to jurisdiction is taken upas preliminary point and counsel for both sides were heard on that aspect.

4. The main contention of the learned counsel for the respondents, who hereinafter would be referred to as BSNL, is that since no part of cause of action has arisen within the territorial jurisdiction of this court this court has no jurisdiction to entertain this petition, by placing strong reliance on **MIC Electronics Limited Vs Union of India** which was confirmed by a Division Bench of this Court in **MIC Electronics Limited Vs Union of India, Oil and Natural Gas Commission Vs Utapal Kumar Basu, Patel Roadways Limited, Bombay Vs Prasad Trading Company, B.R. Electricals Vs The Chairman and others, Union of India Vs Sri Ladula Jain, and Kusum Ingots & Alloys Ltd., Vs Union of India**

5. The contention of the learned counsel for the petitioner is that since petitioner is

carrying on its business at Hyderabad and since BSNL which floated the tender, a clause in which is being questioned in this petition, has its office at Hyderabad within the jurisdiction of this Court, it cannot be said that this court has no jurisdiction to entertain this petition. It is his contention that since the petitioner read the bid document at Hyderabad, within the jurisdiction of this Court and since the impugned clause in the bid document affects the right of the petitioner to carry on its business at Hyderabad, this court does have jurisdiction to entertain this petition. He relied on Kusum Ingots & Alloys Ltd case (7 supra), **Industrial Fuel Marketing Co. Vs Union of India ,** and **Navinchandra N. Majithia Vs State of Maharastra.** It is his contention that Article 226 (2) of the Constitution enlarges, but does not restrict, the scope of Article 226 of the Constitution and since the case of the petitioner falls either under Article 226 (1) or 226 (2) of Constitution, this court has jurisdiction to entertain the writ petition more so because the 'Manual of procurement telecom equipment and stores' issued by BSNL (corrected up to June, 2002) copy of which is produced by the petitioner along with the petition reads:

> For the items, which are being procured for the first time where no vendor or very few vendors have obtained type approval so far, the eligibility conditions may be defined as follows: the bidder or his collaborator should have supplied 25 % of the tendered quantity to any other telecom service provider and a certificate given by the competent authority to be enclosed along with the bid; in addition, he shall have to get the offered equipment Type Approved/Validated against the specified GR in a time frame to be defined in the bid document;

and since it is the specific case of the petitioner that the items for which the bid document is issued are not being procured for the first time, impugned condition in the bid document, which is violative of its own procurement policy, petitioner definitely can invoke the jurisdiction of this court to protect the right given to it under Articles 14, 19 (1)(g) of the Constitution.

6. Here I feel it relevant to refer to the decisions relied on by the learned counsel for parties.

6.

7. 7. In **MIC ELECTRONICS LTD** (1 supra) which was confirmed by a Division

Bench in **MIC ELECTRONICS LTD** (2 supra) MIC Electronics Limited, which is a small scale industry, manufacturing Electronics and Telecommunications Network Systems, in response to a tender floated by BSNL, submitted its tender claiming benefit of exemption from payment of bid security up to the amount equal to the monetary limit as certified by the National Small Industries Corporation Limited, as per the bid document. After opening the bids its bid documents were returned by the BSNL on the ground that they are not accompanied with the bid security amount as per Cl.2.1 of Section IV of the Tender Notice. Questioning the said rejection, MIC Electronics Ltd. filed a writ petition in this Court. BSNL opposed the petition, *inter alia*, on the ground that this Court has no territorial jurisdiction to entertain the writ petition. Counsel for both sides, as in this also, relied on **M/s. Kusum Ingots & Alloys Ltd Case** (7 supra) in support of their contention, relating to the territorial jurisdiction of the Court to entertain the writ petition. The finding of the learned single Judge was that the facts pleaded in the writ petition, which have to disclose that at least a part of the cause of action had arisen within the territorial jurisdiction of the Court in which the writ petition is filed, are not found in the petition filed by the MIC Electronics Ltd., dismissed the petition, and that finding was confirmed by a Division Bench because in M/s. KUSUM INGOTS & ALLOYS Ltd., (7 supra) the Apex Court clearly held that in order to confer jurisdiction on a High Court to entertain a writ petition, it must disclose the integral facts pleaded in support of the cause of action so as to empower the court to decide the dispute on the basis that the entire or part of cause of action arose within its jurisdiction and that the facts pleaded in the writ petition must have nexus, on the basis whereof, a prayer can be granted, and that facts which have nothing to do with the prayer made in the petition cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

8. In **UTPAL KUMAR BASU CASE** (3 Supra), relied on by the learned counsel for BSNL, it is held that reading an advertisement calling for tenders, submitting the tender from that place and making representations and receiving a reply thereto, *per se*, would not give rise to a cause of action to invoke the jurisdiction of the High Court, in whose jurisdiction the person who read the tender notification is residing, and that in determining the objection relating to lack of jurisdiction the Court must

take all facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts.

9. In **Patel Road Ways Ltd., Case** (4 Supra) the Apex Court while considering the scope of explanation to Section 20 (a) CPC held that merely because the Principal Office of the defendant Company or Corporation is located at a place different from the place where its subordinate office, in whose jurisdiction the cause of action arose, plaintiff cannot file the suit in the place where the Principal office of the defendant is located, but has to file the suit only in the court in whose jurisdiction its subordinate office or branch office is located.

10. **B.R. Electricals Case** (5 Supra) relied on by the learned counsel for BSNL relates to payment of the value of the goods supplied. The writ petitioner in that case invoked the jurisdiction of Delhi High Court on the ground that payment due to it was stopped only due to the instructions given by the first respondent's office located at Delhi. Except that no other part of cause of action arose in the jurisdiction of Delhi High Court. Holding that mere issuance of instructions stopping payment due and payable in respect of the goods supplied, by an office, which had no role to play either at the time of entering into the contract or during its performance, would not give raise to a cause of action for invoking its jurisdiction the Delhi High Court, dismissed the writ petition.

11. In **Ladulal Jain Case** (6 Supra) the Apex Court held that the principle underlying clauses (a) and (b) of Section 20 CPC is to see that the suit has to be instituted at a place where the defendant would be able to defend the suit without undue trouble.

12. No doubt in **Industrial Fuel Marketing Co., Case** (8 Supra) Calcutta High Court held that a writ petition challenging the criminal proceedings in another State can be filed in that Court at Calcutta because some of the offices of the complainants are located within the jurisdiction of that Court. In **Navin Chandra N. Manji Thia Case**

(9 Supra) a writ petition filed in Bombay High Court to quash a criminal complaint filed against the writ petitioner (in that case) at Shillong, was dismissed by the Bombay High Court. On appeal the Apex Court set aside the order of the High Court and while ordering transfer of the case from Shillong directed the Mumbai Police to take up further investigation. In my considered opinion this decision of the Apex Court is of no help to the petitioner because, as seen from paras 44 and 45 of the said judgment, a large number of events took place at Bombay (Mumbai) in respect of the allegations contained in the FIR registered at Shillong, and even according to the allegations major portion of the facts leading to the registration of the FIR took place at Bombay. In view thereof the Apex Court held that it cannot be said that no part of the cause of action arose in Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ petition. In the said decision, following the ratio in **Utpal Kumar's Case** (3 Supra) it is held that the expression 'cause of action, wholly or in part arises' used in Article 226(2) of the Constitution seems to have been lifted from Section 20 CPC. In view of the said decision, and the ratio in **Utpal Kumar Case** (3 Supra), **Industrial Fuel Marketing Co., Case** (8 Supra) relied on by Sri Prakash Reddy, the learned Senior Counsel for petitioner, rendered by the Calcutta High Court, should be deemed to have been impliedly over-ruled, and in any event that decision, which is contrary to the decisions of the Apex Court, is of no help to the petitioner.

13. From the decisions relied on by the learned counsel for the parties it is clear that territorial jurisdiction has to be decided based on the averments in the petition, and the petition can be entertained only if the person or authority against whom relief is sought resides or is situate in the jurisdiction of the Court and/or if the whole or part of the cause of action arose within the jurisdiction of the Court.

14. A close and careful reading of the affidavit filed in support of the writ petition shows that the grievance of the petitioner is against the respondents, who are all at New Delhi. There is nothing in the affidavit filed in support of the petition to show that any part of the cause of action has arisen within the jurisdiction of this court or at any branch of BSNL, which is situated within the jurisdiction of this Court, for this Court to exercise its jurisdiction. It is not even the case of the petitioner that any of

the officers of the office of BSNL located within the jurisdiction of this court has anything to do with or any role to play in issuance of the tender notification, or imposition of the conditions impugned in this petition. So the fact that some of the offices of BSNL are located within the limits of this court, *per se,* would not confer jurisdiction of the court to entertain this petition in view of the ratio in **Patel Roadways Ltd., Case** (4 Supra).

15. Therefore, I hold that this court has no territorial jurisdiction to entertain the writ petition.

16. Since any decision given by a Court not having jurisdiction would be a nullity, I do not wish to state anything about the merits of the case.

17. Since I held that this court has no territorial jurisdiction to entertain the petition, the registry shall return the petition to the petitioner for presentation before proper court.

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(C.Y. SOMAYAJULU, J)

Date: 16.02.2005

Ksn

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary to the Government , Union of India,

Department of Telecommunications,
Ministry of Telecommunications, New-Delhi
2 The Chairman & Managing Director,

Bharath Sanchar Nigam Limited (BSNL) B-148,

Statesman Road, Barakambha road, New Delhi
3 The Deputy Director General (MM),

Bharath Sanchar Nigam Limited (BSNL) B-148,

Statesman road, Barakambha road, New Delhi
4 The Joint Deputy Director General (MMT),

Bharath Sanchar Nigam Limited (BSNL) B-148,

Statesman road, Barakambha road, New Delhi
5. The Asst. Director General (ADG, MMX)

Bharath Sanchar Nigam Limited (BSNL) B-148,

Statesman road, Barakambha road, New Delhi

6. 2 CD copies

7. The Section Officer, Writ Filing section.

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